IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8342 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAKTI MAHILA MANDAL & 1 - Petitioner(s)
Versus
DIST EDUCATION OFFICER & 2 - Respondent(s)

Appearance :
MR MUKUND M DESAI for Petitioner(s) : 1 - 2.
MRS ML SHAH AGP for Respondent(s) : 1 - 2.
MR DIPAK A THAKER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/09/2006

ORAL JUDGMENT

1. In the present petition, the petitioners have challenged an order dated 10-3-1996, passed by the respondents.

2. Shortly stated, the facts leading to this petition are as follows. The petitioners run a secondary/higher secondary school from a rented premises as per the grant-in-aid code. The Government undertakes the burden of paying rent within certain limitations. The petitioners enjoyed the benefit of Government grant towards rent of the premises. Accountant General's Office however found prima facie that the petitioners were occupying rooms in excess of justification. A show cause notice was therefore issued on 31-5-95 calling upon the petitioners as to why for having occupied four rooms in excess of its requirement, the petitioners should not refund an amount of Rs.54,080/-, calculated at the rate of 13,520/- per annum for a period of four years. The stand of the respondents is that the petitioners occupied 16 rooms against justification of 12 rooms, and therefore, payment made in excess should be

refunded. Petitioners made a detailed representation in response to the said show cause notice under their communication dated 6-10-95. In the said communication it was stated that though the school runs in two shifts, the morning shift starts at 7-20 a.m. till 1-00 o'clock in the afternoon, whereas in the day shift, the school starts at 11-45 afternoon till 5-30 evening. It was further contended that it was not possible to accommodate students of different shifts in the same classes.

Respondents however, passed the impugned order on 10-3-2006 seeking recovery of an amount of Rs.54,080/- upon which the petitioners filed the present petition.

3. The petitioners mainly contend that the petitioners had taken the premises on rent from a public trust ; that 16 rooms were necessary for carrying on the educational activities ; that the Government policy permits grant towards payment of rent for the premises ; that respondents erred in seeking recovery of the grant already released.

On the other hand, in addition to relying on the correspondence on record, respondents have also filed an affidavit stating inter-alia that the petitioners were occupying four rooms in excess of their justification. It is pointed out that four class rooms each are separately allotted for morning shift and day shift of the school. It is further pointed out in the affidavit in reply that following four rooms were not approved for the purpose of grant.

(a)Option room for standards 11 and 12 classes as both the rooms are considered for grant-in-aid purposes.

(b)Laboratory room not found justified for standards 11 and 12 being Arts and Commerce Faculties.

(c)Lunch room is not a separate room but a partition is put in the Library, hence declined and

(d)Prayer's room is not considered for grant-in-aid purpose.

4. Learned advocate Shri Chauhan for Shri N.N.Desai for the petitioners submitted that the impugned

order suffers from infirmities. He submitted that principles of natural justice have been violated as proper opportunity was not given to the petitioners to defend themselves. He contended that the order is not a speaking order and the same therefore should be set aside. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Notified Area Committee vs. Addl Director, Consolidation and others* reported in *(2002) 10 SCC* 87 wherein the Hon'ble Supreme Court observed that reasons are the flesh and blood of judicial adjudication and such reasons must be shown in the orders which are liable to be challenged in the superior court.

It was also contended that the petitioners fully utilised 16 rooms for which to cover the rent, grant was also paid by the Government. It was therefore, contended that the recovery is not justified.

Learned AGP Mrs. M.L.Shah supported the action on behalf of the Government and submitted that the petitioners cannot seek grant for the

class rooms, which were not count justified for imparting education. She submitted that the order calls for no interference.

5. Learned advocate Shri Thakor was not present on behalf of office of Accountant and General.

6. Having heard learned advocates appearing for the parties, I find that the petitioners have been granted sufficient opportunity of being heard. Show cause notice was issued before passing the impugned order. The impugned order, however briefly, records reasons. The order, therefore, cannot be set aside either on the ground of violation of principles of natural justice or not being a reasoned order.

7. Independently of these technical grounds I have also examined the challenge on merits. Learned advocate Shri Chauhan for the petitioner, in my view, is justified in pointing out that students of standards 11 and 12 enjoyed certain options of subjects. From the time table produced at Annexure K, it can be seen that such options are spread over virtually throughout morning session of the school. At least one additional

class room would therefore be necessary to accommodate the students taking different elective subjects. Disallowing this expenditure on part of the respondents cannot be sustained.

8. With respect to the room for laboratory, the same was correctly disallowed since an Arts or Commerce faculty would not require a laboratory. Respondents have pointed out that lunch room was not a separate room, but was created by putting a partition in the library. Obviously additional rent cannot be paid for this purpose. Respondents are also justified in pointing out that for prayer room, grant-in-aid cannot be paid.

9. In the result, except for the rent for one additional class room for optional subjects, rest of the recovery has to be upheld.

10. In the result, 1/4th recovery of total amount of Rs.54,080/- i.e. Rs.13,513/- is set aside. Remaining amount the petitioners shall refund to the respondents. To the above extent the impugned order is modified. Petition is allowed in part. Rule is made absolute to the above

extent. Interim relief stands vacated.

(AKIL KURESHI, J.)

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